



This is an appeal from the Circuit Court's grant of summary judgment in favor of Appellees. Rhonda Hackney, Plaintiff-Appellant, raises the following issues:

- I. Whether a narrow public policy exception to the employment at-will rule exists to ensure accurate chain of custody drug testing of employees in Tennessee?
- II. Whether the trial court improperly granted summary judgment in ruling the Defendant met its burden to "show that there is no genuine issue as to any material fact and that [it is] entitled to Judgment as a matter of law?"

#### FACTS

DRD Knoxville Medical Clinic is a drug rehabilitation center that dispenses methadone to patients for drug addictions. DRD Management, Inc. owns five clinics, including DRD Knoxville Medical Clinic. Rhonda Hackney was employed as a medical assistant with DRD Knoxville Medical Clinic from August 1996 through February 1997. She was hired as an employee-at-will. As a condition of employment, Ms. Hackney was required to sign a consent form for random employee drug testing.

On February 17, 1997, a random employee drug screen was performed. Rhonda Hackney's screen returned positive for methadone and her employment was terminated. Ms. Hackney filed

suit against DRD Management, Inc., DRD Knoxville Medical Clinic, Mary Little, Charles Allen and Janet Hasler for wrongful termination and violation of public policy, defamation, violation of the Americans with Disabilities Act of 1990 (ADA), invasion of privacy, and negligent hiring and supervision. The suit was removed to the United States District Court for the Eastern District of Tennessee. The Defendants/Appellees filed a motion for summary judgment. The District Court granted summary judgment on the ADA claim, but remanded the remaining claims to the Circuit Court. The Defendants/Appellees filed a motion for summary judgment on the remaining claims and the Circuit Court granted summary judgment. In the instant appeal, Ms. Hackney is focusing only on her claim of wrongful termination and violation of public policy. Accordingly, we will only detail the facts pertinent thereto.

THE PARTIES AND THEIR WITNESSES TESTIFIED BY DEPOSITION AS FOLLOWS:

RHONDA HACKNEY

She was initially assigned to the lab as a medical assistant at DRD Knoxville Medical Clinic. The last three weeks of her employment, she was assigned to the medication room. Her

duties included preparing methadone doses, dispensing doses to clients and recording the amount of methadone dispensed to each client. On February 17, 1997, she was advised of a random employee drug screen between 10:40 and 10:45 a.m. She was instructed to give her specimen in the wrong bottle, but instead, she went to the lab to retrieve the correct bottle. She told Mary Little that the wrong bottles were being used for the employee drug screen and showed Ms. Little the correct bottles. Ms. Little told Ms. Hackney to use the wrong bottle anyway. Ms. Hackney put her specimen in the wrong bottle. Between 11 and 11:30 a.m., all the employees took a lunch break. At 11:45 a.m., Ms. Hackney went to Ms. Little's office where Charlotte Cunningham asked Ms. Hackney to show her how to fill out the paper work for the chain of custody bottles. To demonstrate how the paper work should be done, Ms. Hackney put her name on the form and initialed a paper strip which would be used to seal a person's specimen. Ms. Hackney handed the form to Ms. Little to sign as the collector and as the person who checked the temperature of the specimen. Ms. Hackney did not pour her specimen from the wrong bottle to the correct bottle and she did

not see anyone else do so. Additionally, Ms. Hackney did not seal her specimen.

On February 21, 1997, Dr. Charles Allen asked Ms. Hackney to join him in Ms. Little's office. Dr. Allen informed Ms. Hackney that her drug screen returned positive for methadone. Dr. Allen and Ms. Little asked Ms. Hackney if she took methadone for her knee. Ms. Hackney denied taking methadone and told them that the results were incorrect. Ms. Little informed Ms. Hackney that another drug screen was not allowed, but Dr. Allen suggested she take another drug test at her own expense. Neither Ms. Little nor Dr. Allen informed Ms. Hackney that she was terminated at that time. Ms. Little sent Ms. Hackney home and told her she would call her early the following Monday morning. Ms. Hackney went directly to a Smith Kline Beecham lab for a second urine drug screen which returned negative for any drugs.

Over the weekend, Ms. Hackney told Beth O'Dell about her drug screen returning positive for methadone. Ms. Little left a message on Ms. Hackney's answering machine Monday morning. On Tuesday morning, Ms. Hackney called Ms. Little and Ms. Little said she had no choice but to terminate Ms. Hackney for the positive drug screen. Ms. Hackney returned to work on Thursday

to retrieve personal items and her termination slip. She asked Dr. Allen and Ms. Cunningham to accompany her to Ms. Little's office as witnesses. She received a copy of her drug screen results and her termination slip. Dr. Allen said Ms. Little had been instructed to terminate Ms. Hackney's employment on the Thursday prior to the Tuesday when Ms. Little informed Ms. Hackney that her employment was terminated.

MARY LITTLE

She is the Clinic Coordinator for the DRD Knoxville Medical Clinic. She received the call from Mrs. Hasler regarding the random employee drug screen. She asked Ms. Cunningham to assist her in administering the screen. Ms. Cunningham brought the bottles to Ms. Little's office and they both filled out the labels and placed them on the bottles. The labels would have to be torn to be removed and the lids were self-sealing.

The employees were told to retrieve the bottle with their name on it. Ms. Hackney informed Ms. Little that they were using the wrong bottles for employee drug screens. Ms. Little told Ms. Hackney to use the wrong bottle anyway. Ms. Little or Ms. Cunningham instructed each employee to deposit their specimen

in the bottle and return the bottle to them. Female employees deposit their specimen into a plastic cup first and then pour it into the bottle used for the drug screen. Ms. Hackney returned her specimen to Ms. Cunningham. Ms. Cunningham poured Ms. Hackney's specimen into the correct bottle as Ms. Hackney observed, the lid was placed on the bottle, Ms. Hackney signed the piece of paper stating that was her specimen and placed the paper over the top of the bottle. Ms. Little signed a form stating she had checked the temperature of Ms. Hackney's specimen. Ms. Little checked the temperature by feeling the bottle to see if it was warm or cold.

Over a two hour period, Ms. Little and Ms. Cunningham remained in Ms. Little's office with the bottles as the drug screening process occurred. Each employee either poured their specimen from the wrong bottle to the correct bottle or watched Ms. Cunningham do so. Once all specimens were collected, Ms. Cunningham and Ms. Hackney packaged them for shipment. The bottles are placed in a plastic bag with the paper work. Either Ms. Cunningham or Ms. Hackney carried the specimens to the lab for the courier. The specimens remained in the lab for approximately two more hours until the courier arrived. Ms.

Cunningham and Ms. Hackney were responsible for watching the specimens in the lab as they waited for the courier. The specimens were left unattended during the 30 minute lunch break. There is no record kept at DRD Knoxville Medical Clinic regarding every person who comes in contact with specimens from employee drug screens.

Mrs. Hasler instructed Ms. Little to terminate Ms. Hackney's employment on February 21, 1997 due to the positive drug screen. Ms. Little terminated Ms. Hackney on February 21, but her separation notice was dated February 24, 1997. Ms. Hackney asked for another drug test, but Ms. Little refused. Ms. Little and Dr. Allen mentioned the availability of assistance to Ms. Hackney for her drug problem. Ms. Little did not ask Ms. Hackney about her medical history or any foods she had eaten on the day of the drug screen.

CHARLOTTE CUNNINGHAM

She is the head medication nurse at DRD Knoxville Medical Clinic. She supervises the other nurses and schedules their working hours. Ms. Cunningham assisted the Clinic Coordinator, Mary Little, in administering the employee drug screens by preparing the specimen bottles. On February 17, 1997,

she prepared the bottles, placed 12 to a box and carried the boxes to Mary Little's office. Ms. Hackney informed Ms. Cunningham that she had prepared the wrong bottles for the employee drug screen and Ms. Hackney showed her the correct bottles. The employees had already placed their specimens in the wrong bottles. The specimens were left unattended in Mary Little's office during a 20 to 30 minute lunch break. After the break, Ms. Cunningham and Mary Little asked Ms. Hackney to show them how to fill out the paper work that accompanied the employee drug screen. Mary Little checked the temperature of the employee specimens. Ms. Cunningham showed Ms. Hackney the wrong bottle which contained Ms. Hackney's specimen, according to the label, and she poured it into the correct bottle. Ms. Hackney initialed the seal on the correct bottle stating that it was her specimen. Ms. Hackney packaged the specimens for the courier.

BETH O'DELL

She went to nursing school with Ms. Hackney and worked with Ms. Hackney at the DRD Knoxville Medical Clinic. She participated in the random drug screen on February 17, 1997. During their lunch break, Ms. Little handed each employee a bottle. After Ms. O'Dell provided a specimen, she placed the

bottle in a box. Ms. Little and Ms. Cunningham took the specimens to the lab. During the lunch break, Ms. Little asked Ms. O'Dell to open Ms. Little's office door so that Ms. Little could place the specimens in her office. Each employee was told to go to Ms. Little's office to watch their specimen being poured from the wrong bottle to the correct bottle. Ms. O'Dell went to Ms. Little's office and saw one bottle with a specimen being poured into another bottle. Ms. O'Dell was not close enough to see if the bottle contained her specimen, but she was told by Ms. Little that it was her specimen. Ms. O'Dell signed a form stating the specimen was hers. Ms. O'Dell was never informed that her screen returned positive, but she believed that it should have been positive because she was taking Phen-Fen.

DEBBIE PIGMAN

She worked at DRD Knoxville Medical Clinic as a counselor during Ms. Hackney's employment. She participated in the February 17, 1997 random employee drug screen. Ms. Little gave her a bottle for her specimen. She returned the bottle with her specimen to Ms. Little. During lunch, the bottles were kept in the lab. After lunch, the specimens were placed in Ms. Little's office. Ms. Little asked her to come to her office.

Ms. Little informed her that she was transferring her specimen from one bottle to another. Ms. Pigman wanted to give another specimen in the correct bottle, but Ms. Little refused this request. Ms. Pigman signed the paper work which stated that was her specimen. Ms. Pigman discovered that during the drug screening process, Annette Kemp was asked for a second specimen because hers was lost and Sarah McMillan's specimen was left on Ms. Little's desk overnight.

DR. CHARLES ALLEN

He is the medical director and clinic physician at DRD Knoxville Medical Clinic. He worked with Ms. Hackney during her entire employment period and he believed Ms. Hackney performed her duties adequately. On February 17, 1997, Charlotte Cunningham and Mary Little informed the employees that a random drug screen would occur that day. Charlotte Cunningham gave each employee an individually labeled sample bottle. Each person returned their own sample to the lab. The samples were in the wrong bottles, therefore, either Mary Little or Charlotte Cunningham poured each sample into the proper bottle. After the samples were poured into the correct bottles, every employee went to Mary Little's office and signed a paper stating a certain

sample was their sample. The courier who retrieved the employee samples signed for them and the lab signed for them. He was "shocked" when he learned Ms. Hackney's sample returned positive for methadone. He and Mary Little informed Ms. Hackney that she was fired due to her positive drug screen per company policy.

BECKY JO BRANNON

She was employed with DRD Knoxville Medical Clinic from May 1996 through July 1996. In July 1996, Ms. Brannon participated in a random employee drug screen. Her drug screen returned positive for methadone. Because Ms. Brannon was taking medication for cancer, she was allowed to have another drug screening. The second drug screen returned positive for methadone, but she denied taking methadone either time. After the second screen returned positive, she remained employed for a week to a week and a half. When she was terminated, no one informed her that she was being terminated for the positive drug screens. Ms. Brannon was informed about Ms. Hackney's positive drug screen by Ernestine Willis, another employee of DRD Knoxville Medical Clinic.

JANET HASLER

She is the sole owner, Vice-President and Chief Executive Officer of DRD Management, Inc. Mrs. Hasler and her husband, James Hasler, are the only members of the Board of Directors. The principal place of business is Trimble, Missouri. Mrs. Hasler decides whether to hire or fire employees. Mrs. Hasler decided to terminate Ms. Hackney's employment solely based on her positive drug screen. There is no written policy for a person employed by DRD to be automatically terminated due to a positive drug screen. Mrs. Hasler notifies the Clinic Coordinator regarding any hiring or firing decisions.

At each clinic owned by DRD, the amount of methadone is counted each morning and at the end of each day. The methadone is kept in the medication room. At the Knoxville Clinic, the nurses and Ms. Little possess keys to the medication room. The nurses document the methadone they dispense and any methadone that is spilled. During the week of the employee drug screen, there was no methadone which was unaccounted for in the Knoxville Clinic.

On February 17, 1997, she called Ms. Little at 10:30 a.m. and said that all present employees needed to participate in a drug screen. None of the employees were aware of the drug

screen until Ms. Little informed them. Prior to February 21, Mrs. Hasler received notification from the Quest lab that Ms. Hackney's screen was pending positive. The pending positive was confirmed by the GCMS procedure. Mrs. Hasler called the lab and asked a toxicologist if the positive screen could have been caused by handling methadone which can absorb through the skin. The toxicologist told Mrs. Hasler that any methadone absorbed through the skin was an insignificant amount which would not cause a positive drug screen. Mrs. Hasler asked Ms. Little and Ms. Cunningham about how Ms. Hackney's drug testing was conducted. They told her that the bottle was sealed, poured in the presence of Ms. Hackney into another bottle, resealed and then packaged by Ms. Hackney. Mrs. Hasler decided to terminate Ms. Hackney's employment pursuant to the policy of termination for using narcotics stated in the 1995 Employment Handbook.

SCOTT BUTLER

He is employed with Occupational Health Services in Oak Ridge as a medical assistant who performs substance abuse testing. His office conducted a hair sample drug screen on Ms. Hackney which returned negative for any drugs. He prepared a report discussing the accuracy of the random drug screen

performed on February 17, 1997. In preparing his report, he requested chain of custody forms from various labs. Additionally, while preparing his report, Mr. Butler reviewed the depositions of Mary Little, Charlotte Cunningham, Dr. Allen and Ms. Hackney and the Department of Health and Human Services Guidelines for Drug Testing located at 49 C.F.R. Part 40. Mr. Butler concluded that a proper chain of custody was not followed in the drug screen performed on February 17, 1997.

### ANALYSIS

Our standard of review for a trial court's action on a summary judgment motion is *de novo* without a presumption of correctness because our inquiry is purely a question of law. Carvell v. Bottoms, 900 S.W.2d 23, 26 (Tenn. 1995). An evaluation of a summary judgment motion must address these questions: "(1) whether a factual dispute exists; (2) whether the disputed fact is material to the outcome of the case; and (3) whether the disputed fact creates a genuine issue for trial." Byrd v. Hall, 847 S.W.2d 208, 214 (Tenn. 1993). In a motion for summary judgment, the evidence must be viewed in a light most favorable to the nonmoving party, and all reasonable inferences must be made in the nonmoving party's favor. Byrd, 847 S.W.2d at 210. Summary judgment is appropriate if both the facts and conclusions to be drawn from the facts permit a reasonable person to reach only one conclusion. See Guiliano v. Cleo, Inc., 995 S.W.2d 88, 94 (Tenn. 1999).

The material facts are not in dispute.<sup>1</sup> The only question we are asked to resolve is whether Ms. Hackney's

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<sup>1</sup>The parties dispute whether a proper chain of custody was followed for the drug screen on February 17, 1997. However, we do not reach this issue without first determining whether a private employer must follow a proper chain of custody when drug screening its at-will employees.

termination violated Tennessee public policy. As Ms. Hackney acknowledges, Tennessee case law has described the employment-at-will doctrine as allowing the employer or the employee to terminate the employment relationship at any time for any reason. See Harney v. Meadowbrook Nursing Center, 784 S.W.2d 921, 922 (Tenn. 1990); Watson v. Cleveland Chair Co., 789 S.W.2d 538, 540 (Tenn. 1989). Tennessee courts have recognized exceptions to the employment-at-will doctrine:

[A]n employee-at-will generally may not be discharged for attempting to exercise a statutory or constitutional right, or for any other reason which violates a clear public policy which is evidenced by an unambiguous constitutional, statutory, or regulatory provision.

Stein v. Davidson Hotel Co., 945 S.W.2d 714, 717 (Tenn. 1997) (citations omitted).

Examples of public policy for which an employee-at-will may not be discharged are filing a worker's compensation claim, refusing an employer's demand to commit perjury, obeying a lawful subpoena, participating in jury duty and refusing to falsify records. See Chism v. Mid-South Milling Co., Inc., 762 S.W.2d 552, 556 (Tenn. 1988) (citations omitted). Ms. Hackney urges this Court to find a clear public policy which requires private employers to use chain of custody procedures in drug testing of

their at-will employees. As evidence of a clear public policy, Ms. Hackney relies upon the Drug-Free Workplace Programs Act codified at Tennessee Code Annotated section 50-9-101 and following. The Act requires employers who implement a drug-free workplace program to follow chain of custody procedures in drug testing. See Tenn. Code Ann. § 50-9-107(a),(c) (1999). Chain of custody is defined as "the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition." Tenn. Code Ann. § 50-9-103(1) (1999). Only employers that follow the requirements of the Act in implementing a drug-free workplace are covered by the Act. See Tenn. Code Ann. § 50-9-103(3) (1999).

DRD Knoxville Medical Clinic did not implement a drug-free workplace pursuant to the Act. However, Ms. Hackney argues the Act is evidence of a clear public policy for private employers to use chain of custody procedures in drug testing at-will employees. If the Act was intended to cover all employers who performed drug testing of their employees, then the legislature would have used the proper language to encompass all employers. However, the statute only applies to employers who

implement a drug-free workplace pursuant to it. We conclude that the public policy evidenced by the Drug-Free Workplace Programs Act is dismissal of employees for drug use. See Stein v. Davidson Hotel Co., 945 S.W.2d 714, 718 (Tenn. 1997). We are not inclined to extend public policy to include a requirement that all private employers who perform drug testing on at-will employees comply with chain of custody procedures.

Ms. Hackney also relies upon the following statement of a panel of this Court:

While the method in which Davidson conducted the test may violate some public policy in favor of accuracy and minimal intrusion, Davidson's policy of terminating employees who test positive for drugs does not violate any public policy known to this court. To the contrary, Tennessee's public policy is in total opposition to drug use in the workplace.

Stein v. Davidson Hotel Co., an unreported opinion of this Court, filed in Nashville on May 8, 1996. In Stein, this Court did not rule on the issue of whether a public policy existed requiring accuracy in drug testing. The Court speculated that "some public policy in favor of accuracy" may exist. In Tennessee, there is no constitutional, statutory or regulatory provision which clearly evidences a public policy in favor of accuracy in drug testing for private employers.

For the foregoing reasons the judgment of the Circuit Court is affirmed and the cause remanded for the collection of costs below. Costs of appeal are adjudged against Rhonda Hackney and her surety.

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Houston M. Goddard, P.J.

CONCUR:

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Charles D. Susano, Jr., J.

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D. Michael Swiney, J.